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No. 1277

IN THE

Supreme Court of the United States

In the Matter
of
The Application to Discipline JULES CHOPAK, an Attorney and Counselor at Law.

JULES CHOPAK,

Appellant.

PETITION FOR REVIEW ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT.

JULES CHOPAK,
in Propria Persona,
Appellant,
Office & P. O. Address,
261 Broadway,
New York 7, N. Y.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

IN THE

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In the Matter
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The Application to Discipline JULES CHOPAK an Attorney and Counselor at Law.

JULES CHOPAK,
Appellant.

PETITION FOR REVIEW ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION.

Short Statement of the Matter Involved.

As stated by Clark, Circuit Judge, dissenting, a letter (R. p. 50, fols. 148-150) was the crucial issue for which the District Court of the United States for the Eastern District of New York suspended me from practice for 3 years. That action carried with it *instanter, ipso facto,* without a hearing etc., the identical penalty in the District Court of the United States for the Southern District of New York and perhaps such or similar or some penalty in other federal courts including possibly this court in which I was admitted on February 17, 1917.

Other charges were added originally, which appear upon response to the appeal, not to have been pressed in the Ap-

pellate Court. They were remarks that I made in personal correspondence to my client during our attorney and client relationship and afterwards, when I was yet interested in the case to the greater share of the attorney's fee, and also some testimony of a critical nature which I made during testimony in a hearing, given under cross-examination, when being cross-examined by an opponent. As to this remark, instantly I recalled it, and immediately, I expressed my regret. Thereafter, I repeatedly strove to disavow and to make amends (R. p. 49, fol. 145, p. 14, fols. 41, 42; p. 16, fol. 48; *pp. 63, 64, fols. 189,* 190; p. 112, fol. 335).

The Charges in their entirety are contained in the Bill of Particulars (R. at pp. 37 to 50, fols. 109 to 150).

Basis on Which this Court has Jurisdiction.

The decree to be reviewed was made March 18, 1947 (Swan and Chase, JJ. concurring for affirmance; Clark, J. disagreeing and voting for remanding). The Review is sought under Sec. 240 (a) of the Judicial Code and also the First Amendment to the Constitution, in the light of Pennekamp v. Florida, 328 U. S. 331 and Bridges v. California, 314 U. S. 252.

A substantial *federal* question is involved in that the principles involved affect every lawyer practising in the United States courts. A *federal* question of substance is involved, not heretofore determined by this court, as to the extent that a private letter to a judge; private letters to a client not involving moral turpitude or tantamount to crime; or statements as testimony in a judicial hearing in a federal court, constitute guilt of "unprofessional conduct" (p. 31, fol. 92).

Concurrent findings of the courts below (yet, there is one dissent in the Appellate Court) do not relieve this court of the task of examining the foundation for findings.

This court has power to correct error in judgment and to make such disposition as the justice may *at this time require.*

This court is not asked to review any acton of any *state* court (there exists none) but only of a federal court inferior to it.

Law and Rules established by decided cases in this court, among cases decided in lower federal courts.

The Questions Presented and Reasons Relied on, for the Allowance of the Writ.

A.

Conflict of the action of the courts below with views expressed and action taken by this court in the following authorities:

Pennekamp v. Florida, 328 U. S. 331, Reed, J., pp. 334, 348 to 350), (Frankfurter, J., pp. 357, 366, 368); (Murphy, J., pp. 369, 370); (Rutledge, J., pp. 371, 372).

Bridges v. California, 314 U. S. 252, 262 to 268.

Brooklyn Bank v. O'Neill, 324 U. S. 697.

Watts v. Umone, 248 U. S. 9.

Cooke v. U. S., 267 U. S. 517 especially at pp. 532, 533, 538, 539.

Ex Parte Tillinghast, 4 Pet. 108.

Ex Parte Garland, 71 U. S. 333, 378, 379.

Ex Parte Bradley, 74 U. S. 364. 370.
Selling v. Radford, 243 U. S. 51.

B.

1. Whether writing the particular letter (R., p. 50; fols. 148-150), assuming that it is the only matter to be considered, was "unprofessional conduct".

2. Whether writing the letter, as a private letter, warranted *three* years suspension, with like penalty and such consequences inflicted in other courts, including this court.

3 Whether the condemnation for writing the letter did not conflict with Cooke v. U. S., 267 U. S., which did not disapprove of a letter at page 533.

4. Whether the particular verbiage of the letter, assuming that it was not private in character, was such as was "unprofessional conduct" or a want of "private and professional character" as "appears to be fair" (C. C. A. 2nd Cir.) or "personal and professional character and standing are good" (This court Rule 2, 2).

5. Whether the action of the court was warranted, in view of the fact that the letter did not involve any moral turpitude.

6. Whether the writing of the letter was proof of the absence of "fair private character"; was not "good behavior"; was "misconduct" and was "moral or professional delinquency" within the rule of *Ex Parte* Garland, 71 U. S. 333, 378, 379.

7. Whether, assuming that that language used and the letter delivered to the judge was contemptuous, was it proper and sufficient to discipline me as a lawyer in my

profession, inclusive of other courts in the light of *Ex Parte* Garland, 71 U. S. 333 *et seq.* particularly point 7, which ruled that the attorney's admission was not "mere indulgence" nor "a matter of grace and favor, revocable at the pleasure of the court" and in the light of *Ex Parte* Bradley, 72 U. S. 364, where the lawyer spoke disparagingly to the judge, *in and out of court and handed him a letter relating to the subject matter.*

8. Whether the letter was contemptuous and grievous as warranted disciplinary action, in the light of Nye v. U. S., 313 U. S. 33 at point 5.

9. Whether the action such as it was even measured to Selling v. Radford, 243 U. S. 46 at 49, where it was shown that the attorney filed no inventory in a Probate Court estate for 8 years; owed it $21,611.34, said to be "disgracefully dishonest"; had been disbarred; continued to practice and charge fees as an attorney of this court and this court granted him an opportunity to defend.

10. Whether punishment by an inferior federal court for contempt was "inherently and necessarily" a want of "fair private and professional character essential to admission" to this court in the light of Selling v. Radford, 243 U. S. at p. 51.

11. Whether the action of the District Court, as affirmed, one judge disagreeing, was not "impulse to reprisal" as condemned by this court (267 U. S. 539).

12. Whether in view of the withdrawals of the other specifications of the Bill of Particulars, or not pressing them, as stated by the U. S. Attorney, the original *penalty of three years was not oppressive and excessive.*

13. Whether the action of both courts in using instances of complete satisfaction of prior punishment for undisclosed and unrelated past events, without notice to defend or explain; without hearing thereon; in the absence of any causal connection, was not injustice and contravention of justice, in the light of *Ex Parte* Garland, 71 U. S. 333, which did not exclude for treason subsequently pardoned; *Ex Parte* Bradley, 74 U. S. 364, 372, 373, 375, *which disapproved punishment upon one ground with notice to defend upon other grounds;* and Selling v. Radford, 243 U. S. 46, 49, which refused to discipline an attorney of this court with respect to conduct in other courts, without first giving a hearing upon the matters alleged to have been judged in the other courts (R., p. 24, fol. 71).

14. Whether I had not expiated for the previous occurrences, whatever they were, without a hearing *de novo,* if they were to be re-used, and whether it was not error to use those instances, without notice or opportunity to me to review or to mitigate them; and whether it was not error to cumulate the penalty and to mete out punishment for the present occurrence, using the previous matter fully expiated as a base.

15. Whether the "sound discretion" of the District Court was not reviewable and reversible on the facts and the law by the Circuit Court of Appeals and by this Court.

16. Whether as stated by the Appellate Judge, not concurring, that the action of the District Court was *vengeful* (R., p. 142).

17. Whether both courts had not distorted the Canons of Ethics used to support the conclusion and ignored Canons

of Judicial Ethics which were applicable (R., pp. 3, 5, fols. 8 to 15, 73-75).

18. Whether the District Court, as confirmed by the Circuit Court of Appeals, had not used material for its decision which was *de hors* the issues as made by the charges and Bill of Particulars, without notice to me or opportunity to refute the same and had thereby condemned me without opportunity of defense as to such matters (R., pp. 6 to 9, fols. 16 to 27).

19. Whether the courts below were justified in condemning me *for confidential communications between attorney and client,* which I did not disclose and which involved no moral turpitude but only opinion matter and advice which was as fully protected from disclosure, as the client's communications to me were protected (R., pp. 10 to 12, fols. 28 to 35).

20. Whether, by my oral statements immediately retracted and written statements under oath, I had not mitigated or expiated all of my unfortunate remarks as to Judge Kennedy to the extent that I deserved no penalty for them.

21. Whether the District Court had not erroneously condemned me for personal hostility to Judge Clarence G. Galston and, on the contrary, should have found and held that that Judge bore personal bias, prejudice and hostility towards me (R., pp. 17, 25, fols. 49, 50, 73).

22. Whether my letter to Judge Clarence G. Galston was not legally permissible, but of questionable taste with the use of poor discretion in the light of Pennekamp v. Florida, 328 U. S. 331 (R., pp. 18 to 23, fols. 52 to 69).

23. Whether my letter to Judge Clarence G. Galston was not protected and permissible, but bad in taste and indiscrete, by Bridges v. California, 314 U. S. 252, 262, to 268 and the First Amendment to the Constitution.

24. Whether the courts below erred in disregarding the facts of personal hostility evidenced by the conduct of Judge Clarence G. Galston to me as shown in the (R., pp. 53 to 55, fols. 157 to 165).

25. Whether the courts below erred in not holding Judge Clarence G. Galston to the Canons of Judicial Ethics required of him (R., pp. 56 to 61, fols. 166 to 183).

26. Whether the courts below erred in not holding that the remarks as to Judge Kennedy made in the course of a hearing were privileged (R. pp. 64 to 67; fols. 192 to 201) and thus warranted no disciplinary action.

27. Whether the courts below had not erroneously condemned me as a "clear case of misconduct" *(Ex Parte* Wall, 107 U. S. 265, 288), had not abused and made grave irregularity; had not exceeded moderation and judgment; had not acted flagrantly improper *(Ex Parte* Burr, 9 Wheat 529) and *vengefully*, as indicated by Judge Charles E. Clark in his disagreeing opinion (R., pp. 140 to 143) entitling to review by this court, as so held therein.

28. Whether, as indicated in the disagreeing opinion, the courts below were not bound to respect the principles announced by this court as to laymen and newspapers and were not bound to apply them to me as well, even though I am an attorney.

29. Whether the courts below should not have accepted my effort at self punishment and self effacement as well as promise and apology as sufficient mitigation and satisfaction or partial mitigation and satisfaction and not to have indulged "with greater severity of punishmen'" for a letter "privately written to the Judge himself" as Judge Clark said, than fines for contempt imposed in other cases which involved publicity (R., p. 140).

30. Whether the disagreeing judge did not decide with greater logic and justice when he said: "Facing the problem squarely, I think compels the initial concession that here criticism of the court, if properly expressed, could not have been considered out of place" (R., p. 141).

31. Whether the courts below adopted the additional matter, later discarded, as a "shoring-up device" to bolster a proceeding for the letter, and whether that use did not lessen rather than increase confidence in the result, as declared by the disagreeing Judge at Record, p. 142.

WHEREFORE, I respectfully pray that this petition be granted and the writ of certiorari allowed.

April 18, 1047.

JULES CHOPAK,
In Propria Persona,
Appellant,
261 Broadway,
New York 7.

BRIEF IN SUPPORT OF PETITION.

I respectfully ask your honors to excuse me from writing the usual Brief on the law and allow me to tersely skeleton the salient topics or points, *for the reason* that a Brief virtually would be a repetition of most of the matter and decided cases already in the Printed Record.

Instead of being brief and concise the repeated matter would be duplication and instead of simplifying the subjects the Brief would be laboring the court.

My defense, this is my appeal to this court, is entirely on legal grounds. There never was any dispute as to the facts, which I always conceded.

So my Brief on the law will be set forth in classifications as follows:

1. Preface;
2. Those points set forth in my Answer to the charges;
3. Those points set forth in my Assignments of Errors to the Circuit Court of Appeals;
4. Points noticing arguments in the Brief for the District Court in the court below;
5. Those points indicated by the affirming decision of the *majority* (one Judge dissenting) of the Court below; and indicated by the opinion of the dissenting Judge.

1. Preface.

The District Court first charged me with "unprofessional conduct and conduct prejudicial to the administration of

justice" (R., p. 34, fol. 102). This afterwards became *reduced* to "unprofessional conduct" *only* (R., p. 30, fol. 90; p. 118, fol. 354, p. 133, fol. 399).

In turn the "unprofessional conduct" revolved around a letter (R., p. 50, fols. 148-150) termed "insulting" by the majority of the affirming court (R., p. 138) and "ungentlemanly, if not insulting" by the dissenting Judge (R., p. 142).

A Bill of Particulars (R., pp. 37-50, fols. 109 to 150) was intended, as I thought, to inform me as to what I should meet as charges.

1. There were letters I wrote to a client during attorney and client relationship, not of any criminal or fraud nature (R., p. 37, fol. 110).

2. There were statements as testimony made during a hearing (R., p. 37, fol. 110).

3. A letter written to Judge Clarence G. Galston (R., p. 37, fol. 111).

No charges were made of punishment because of failure to appear and personally testify, *when the charges were admitted as fully and as broadly as made.*

No charges were made of affront to any provisions of Canons of Ethics of Bar Associations.

No charges were made that a prior suspension in that court and a denial of reinstatement in another court would be gone into; nor notice given to me to be heard, respond or explain as to them. The references to them, having expiated themselves, merely established a double or treble jeopardy here, as the case may be (R., p. 133, fol. 398).

No charges were made as to letter writing, which was *not* protected by the *attorney and client relationship*, the charges being limited to attorney and client letters.

No charges were made of contempt of court, either civil or criminal, but only as to a private letter written to the Judge himself, termed at the worst "insulting" and "ungentlemanly".

No notice was given that proceedings as to attorneys' fees voluntarily agreed upon by the parties themselves and confirmed by the court, would be reviewed (R., p. 122, fols. 364 to 366) and that there would be extracted from an affidavit of the client (R., p. 123, fol. 369) repudiated by the Official Referee and repudiation confirmed by the offended judge, matter to be used to punish me, when, that judge had previously arbitrarily failed and refused a hearing to me or opportunity to submit a responding affidavit as to it (R., p. 54, fols. 161-162).

No notice was given by charges, Bill of Particulars, or advance information of any sort that the "papers and records in the civil case" would be gone into with opportunity to prepare for and to meet the contentions as to such matters (R., p. 131, fol. 391).

No notice was given that punishment would be given for arguing in defense and in mitigation the decision of this Court in Pennekamp v. The State of Florida, concerning the denunciation of Courts and Judges (R., pp. 131, 132, fols. 393, 394).

2. Points in Answer to Charges.

1. Judge Clarence G. Galston had worked up antipathy and hostility to me for years and was really "gunning" for me (R., pp. 53-55, fols. 157-165).

2. By his actions, he violated the Code of Judicial Ethics also set for him by Bar Associations (R., pp. 56-57, fols. 166-171).

3. His action contravened advice of Chief Justice Stone of this Court (R., pp. 57-58, fols. 171, 172).

4. He acted contrary to expressions of federal appellate and other federal inferior courts (R., pp. 59-60, fols. 177-180).

5. Also, the Court of Appeals, State of New York, sustained my action as to him (R., p. 61, fols. 181-183).

6. I was entitled to use words in the English language dictionary which were not criminal or heinous and entitled to "freedom of speech" as well as other citizens and the Press (R., p. 62, fol. 184; p. 63, fol. 187).

7. None of 3 leading Bar Associations had any precedents against me (R., p. 62, fol. 185; pp. 71-74, fols. 211-221).

8. Under oath, I apologized and retracted for the remarks as testimony under cross-examination as to Judge Kennedy (R., p. 63, fol. 189).

9. As to Judge Kennedy, I explained all the circumstances leading up to the testimony and pointed out, too, that, having been given in a hearing under cross examina-

tion, it might have been privileged (R., pp. 64-67, fols. 190-200).

3. Points in Assignments of Errors to Circuit Court of Appeals.

10. Even Judge Galston did not claim that, by my letter to him, I was seeking special favor in contravention of the Canons of Ethics. (Compare letters, R., pp. 3, 4, fols. 9-11 with pp. 4, 5, fols. 12-14.)

11. The District Court argued erroneously as to Rule 3 of the Canons of Ethics (R., p. 5, fol. 15) as shown by Judge Clark's dissenting views (R., p. 142).

12. Without notice as to the topics, the Courts below discussed and used matter not contained in any notice or the Bill of Particulars (R., pp. 6-9, fols. 16-27).

13. Without recognizing the rule of confidential communications, except when criminal or fraud and like wrongs, the courts below did violence to my confidences (R., pp. 14-15, fols. 42-44).

14. The Courts below, except the Dissenting Judge, did violence to my effort to excuse as to Judge Kennedy (R., p. 16, fols. 46-48).

15. Solely, as to Judge Clarence G. Galston, the courts below (Judge Clark dissenting) refused to be bound by Pennekamp v. Florida, decided by this court (R., pp. 18-23, fols. 52-69).

16. The letter to Judge Clarence G. Galston was neither "moral turpitude", nor evidence of "bad moral charac-

ter''; nor not ''good moral character'', (R., p. 23, fol. 70) but an ''angry'' letter (R., p. 142).

17. The courts below should have found from the entire record that Judge Clarence G. Galston was hostile to me and that his actions were such that I was entitled to claim for bias and prejudice as to him within the meaning of 28 U. S. C. A. 25, even though for short time, by statutory proscription, I could not apply for relief thereunder.

18. The courts below erroneously condemned me, not for failing to meet the issue but for not giving *testimony* as to the whole of the matter, which I had already wholly and mitted under oath (R., p. 28, fol. 84).

4. Points Noticing Arguments for the District Court in the Court Below.

19. In the Court below, the U. S. Attorney for the District Court said ''The gravamen of the complaint'' (Brief, p. 2) was the letter to Judge Clarence G. Galston and argued in Point I (Brief, p. 6) that all action was justified because of this court's decision in Cooke v. U. S. 517. That case however was clearly distinguishable and in any case was certainly no authority for the action of the District Court as to me, for reasons:

1. The Court pursued a wrong remedy, if *Cooke* v. *U. S.*, 267 U. S. 517, should be considered as a pattern. The individual judge should have proceeded against me for a ''contempt'' not in the presence of the Court but so near to him as to have constituted a ''contempt'', as to which I would have had an opportunity to apologize, at least, for the strong, tactless and indiscreet language

or to be punished by fine or imprisonment or both; but not to be impeded and destroyed in my standing and in my business or profession by disciplinary proceeding in other U. S. Courts, which had no grievances against me, as well as even in that court.

2. Otherwise, *Cooke* v. *U. S.*, 267 U. S. 517, is no authority to support the court's action.

3. Whatever the penalty, if any, it could never equal 3 years deprivation from professional business transactions in the Southern District Court and other U. S. Courts.

4. Nor is *Cooke* v. *United States* even remotely an authority here. (a) There, the lawyer deliberately ignored his statutory right to show bias and prejudice (pp. 518 headnote, 519, foot, 532, 533) in the regular way (28 U. S. C. A. 25). When he had time and opportunity to do so, he deliberately took the law into his own hands. (b) There, there were 4 other cases yet to be tried before the same judge or a different judge not before March 2, or after (he wrote the letter on February 15th, 15 days before the term, when he needed only 10 days for his affidavit of prejudice), whereas, here, nothing was to be done but to sign an order and no other business remained and I never had the statutory time to file an affidavit of prejudice.

In the *Cooke* case, there was no occasion to address the Court with any communication whatever, as the verdict had been given. It was then a matter relating to the judgment and finality. Here, the proposed order followed an announced decision. Until promulgated, the order could be altered. As to the prospective order, it was an order "settle order on notice". I had the

right and the procedure to address the Court by a communication of some sort. It could have been a counter-proposed order; a brief; a communication and even a letter in writing *(Cooke* v. *U. S.*, 267 U. S. at p. 533). That is all that I did. It is a fiction and a sham, unworthy of judges in high places to so distort language of Canons of Ethics to say that such a communication was even dreamt, let alone intended, *to be a communication of an argument privately with the Judge as to the merits of a pending cause and a device or attempt to gain a special personal consideration or favor.*

5. Points Made by the Majority and Dissenting Opinions of the Court Below.

20. The majority opinion described the letter written to Judge Clarence G. Galston as "insulting" and stated that a letter written to "appellant's client" was written without "the slightest foundation", yet it required an explanation to give it vitality (R., p. 138).

21. The majority of the court used as argument for affirming the order of the District Court the fact of my non-appearance and my non-testimony (R., p. 139) when I had already admitted under oath everything which had been charged.

22. The majority of the court found that the order was appealable and, therefore, it had the power to review the order and then, notwithstanding, the court proceeded to rule that the measure of the discipline "rested in the sound discretion of the District Court" which in effect nullified the power to review. It is not understandable how an

order can be reviewed as to the substance without also being reviewed as to the consequence (R., p. 140).

23. The majority of the court fell into reversible error upon also considering and approving the action of the District Court in using twice prior disciplining for matters unrelated to the matter before the court without notice, hearing or opportunity to explain or to distinguish (R., p. 140).

24. On the contrary, the dissenting opinion of Clark, Circuit Judge is much more persuasive; more studied; humane and understandable. The dissenting judge (with certain portions eliminated) said (R. pp. 140, 141, 142, 143): CLARK, *Circuit Judge* (dissenting):

"This case has given me much concern. Emphatically and eloquently the Supreme Court has safeguarded the right, even the duty, of free general and public criticism of the courts against repression by fines for contempt. *Pennekamp v. Florida,* 328 U. S. 331; *Bridges v. California,* 314 U. S. 252. This case really presents the same issue, albeit without the same publicity (since the criticism was made privately to the judge himself), but with greater severity of punishment (since appellant lost his professional standing for three years). * * *

"In what I shall have to say, I do not propose to defend the appellant's conduct. As I shall point out, I think he did go so far as to overstep the bounds of gentlemanliness and propriety expected of an officer of the court. Had there been some moderate discipline, with some recognition of the circumstances of extenuation, I should not have disagreed. * * *

"Facing the problem squarely, I think candor compels the initial concession that here criticism of the court, if properly expressed, could not have been considered out of place. Over appellant's objection and contrary to Federal Rules of Civil Procedure, Rule 53(b), a reference to a master had been made of a matter covered by contract of the three parties in interest and quickly settled upon hearing; but appellant, notwithstanding his objections and his success on the merits, found himself taxed with very considerable costs. Under the circumstances, reversal on appeal seems likely, though the expense of the process would have eaten up much of the amount involved. In addition, there seem to have been, or at least so he thought, circumstances of apparent peremptoriness and harshness directed against his interests in the original hearing, thus increasing his sense of injustice.[1] Service of the proposed order called for some response; and a dignified protest, with refusal to submit a counter order, would have been unexceptionable. What he actually wrote the judge, 66 F. Supp. 265, 266, was ungentlemanly, if not insulting; but it was the use of words like "despotic," "rule with passion and vehemence," rather than the fact of criticism, which made the offense. For this I would not say that no punishment should be exacted;

[1] The lawyer who appeared for appellant below and in whom the senior judge said he had "every confidence" presented an affidavit in which he swore that on the original hearing (where the reference was ordered) he attempted to appear in place of appellant to ask for a continuance, but was not allowed to speak, being discourteously ordered to "sit down." *Cf.* Frankfurter, *J.*, in *N. L. R. B.* v. *Donnelly Garment Co.*, S. Ct., March 3, 1947: "It takes time to avoid even the appearance of grievances. But it is time well spent, even though it is not easy to satisfy interested parties, and defeated litigants, no matter how fairly treated, do not always have the feeling that they have received justice."

three years' suspension does, however, suggest the Vengeful.[2]

"True, the record, and the opinion below, discuss additional matters. But the United States Attorney put the letter to us as the crucial issue; and it seems to me that this must be so. In fact, the reference to these other matters seems so much a shoring-up device as, in my mind, to lessen, rather than increase, confidence in the result. Reference to this angry letter as also a violation of the ethical canon against "Attempts to Exert Personal Influence on the Court" is far from persuasive. * * * The allusion to another judge, even had it been direct and apt, might still seem a doubtful ground when thus extracted from a personal letter to the client; it seems all the more so in its actual vague, unoriented form which only became at all direct when at the open hearing appellant conceded its impropriety in trying somewhat desperately to withdraw it and apologize for it. In fact, his attempt at exculpation —that he did not actually know the judge in question— is used against him. 66 F. Supp. 265, 269. Finally he is condemned for not appearing at the proceedings on order of the court. For this he is properly to be criticized; but it seems to me one can only read his several letters to the court as showing not defiance, but fear and an attempt at finding some means of escaping the judgment which he cor-

[2] While it was natural and proper for the judge involved to refuse to sit in the disciplinary proceedings, this probably worked against appellant by substituting subconscious pressures of group loyalty for the opposite pressure on a judge to lean backwards in a case involving himself.

rectly foresaw.[3] Reading them, I cannot but believe that a suggestion from the Court as to the desirability and utility of an apology would have gone far towards effecting adjustment of this matter without the publicity it is now of necessity receiving." • • •

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[3] Thus see his final letter of May 31, 1946: "sincere regret that your Honors may feel any affront because of my non-personal appearance"; "the act is not with any intention of personal disrespect or offense. I am suffering intensely from the consequences of the trouble as a whole. I am not without fear of the outcome"; "I have visited upon myself voluntarily the following punishment [*i. e.*, withdrawal from all cases before the court and a resolution never to appear again before any of the judges]"; "I pray your Honors to accept this letter as the solution and the termination of the matter. I pray you not to grind me down to disgrace beyond all of the loss that is now being occasioned by this matter," etc.

Respectfully submitted,

JULES CHOPAK,
In Propria Persona,
Appellant,
261 Broadway,
New York 7.

FILE COPY

IN THE

Supreme Court of the United States

No. 1277.

October Term, 1946.

In the Matter
of
The Application to Discipline JULES CHOPAK, an Attorney and Counselor at Law.

JULES CHOPAK, Appellant.

PETITION FOR REVIEW ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION IN THE FURTHER LIGHT OF AND INDICATED BY CRAIG ET AL. V. HARNEY, NO. 241, OCTOBER TERM, 1946, DECIDED MAY 19, 1947.

Your petitioner respectfully prays the Honorable Court as follows:

1. To make no distinction between individuals for their remarks.

2. Not to grant greater liberality to newspapers and laymen for their expressions than to lawyers.

3. Not to declare greater onus and restriction as to a lawyer than would be granted to a group of individuals or to newspapers.

4. To make no distinction between freedom of speech and freedom of the press.

5. Not to cast upon lawyers infirmity and impediment which is saved to newspapers and public men by this court.

6. Not to condemn a lawyer for a private letter to a judge, which, if published in a newspaper as an editorial or a comment would be allowed by this Honorable Court.

7. Not to grant judges of the District Court, created by Congress, greater powers than the Constitution, First Amendment, grants to Congress, namely "abridging the freedom of speech or of the press".

8. Not to set one rule for "criminal contempt" cases, as were *Bridges, Pennekamp and Craig cases,* and another rule for disciplinary proceedings of attorneys.

9. Not to grant immunity to the District Court of the United States from comment or criticism, whether public or private, which the Court has held shall not be granted to State Courts.

IN ADDITION TO THE FOREGOING, I RESPECTFULLY FURTHER ARGUE:

In my main Petition and Brief, I have alluded to the *Bridges* and *Pennekamp cases* at pp. 3, 7, 8, 12, 18. I have liberally quoted from the *Pennekamp case* in the Record in the Assignment of Errors at fols. 52 to 69 inclusive; and in my Answering Affidavit to the charges, I used the *Bridges case,* at fol. 184.

The District Court, which condemned me, made reference to the *Pennekamp case* at Record, fols. 393-394, to rule out the application at fol. 395. That Court chose not to be

governed by it. By its rule, it adjudged that a lawyer of the court had less freedom of expression because he was a lawyer of the court than had other citizens.

My Petition and accompanying Brief herein were docketed in this Court on April 22, 1947. The case of *Craig et al. v. Harney* was promulgated on May 19, 1947. I was unable to argue the *Craig case* previous to now.

Craig et al. v. Harney was a "constructive criminal contempt" case where the actors were sentenced to jail for 3 days. The decision from which I am appealing put me out of my office for *3 years.*

H had to do with newspaper notoriety repeated as news items, stories, articles, reports and editorials and published in three public newspapers serving communities with combined population of 152,000 persons. (My act was a private letter to the judge himself which was published by the judge himself).

The newspapers spoke of the judge and his rulings as "arbitrary action", "travesty on justice", "gross miscarriage of justice", "high handed", "outraged", and "tragedy".

This Court assessed the language so used as follows:

> *"This was strong language, intemperate language, and, we assume, an unfair criticism. But a judge may not hold in contempt one 'who ventures to publish anything that tends to make him unpopular or to belittle him. . . .'* See *Craig v. Hecht,* 263 U. S. 255, 281, Mr. Justice Holmes dissenting. *The vehemence of the language used is not alone the measure of the power for contempt.*
>
> *The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil."*
>
> • • •

Italics, except titles, are mine.

> *"It might well have a tendency to lower the standing of the* judge in the public eye."
>
> * * *
>
> "Giving the editorial all of the vehemence which the court below found in it we fail to see how it could in any realistic sense create an imminent and serious threat to the ability of the court to give fair consideration to the motion for rehearing."

The trial judge, in the *Craig case,* "concluded that the reports and editorials were designed falsely" * * * "to prejudice and influence the court in its ruling on the motion for a new trial then pending". On appeal, this was held "reasonably calculated to interfere with *the due administration of justice"; also to "force, compel and coerce"* the judge. These arguments paralleled arguments made by the District Court judges who condemned me in the first instance in their "Opinion of Suspension" printed in the Record at fols. 356 to 358; 386 to 389. It was adhered to by two of the appellate judges with scarcely any analysis of the topics involved; but considerably disapproved by the dissenting judge, who preferred to follow this Court in the *Bridges and Pennekamp cases.* He, too, did not know of the *Craig* decision, when he wrote.

The majority of the Justices of this Court decided to adhere to the rule, previously crystallized and consolidated which

> *"forbade the punishment by contempt for comment on pending cases in absence of a showing that the utterances created 'clear and present danger' to the administration of justice.* (314 U. S. pp. 260-264."

The reason given was:

> "and the *unequivocal command of the First Amendment serve as constant reminders that freedom of speech and of the press should not be impaired through the exercise of that power, unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice."*

And, also,

"There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to supress, edit, or censor events which transpire in proceedings before it."

The concluding words of the majority of this Court in the prevailing opinion were:

"But, the rule of the Bridges and Pennekamp cases is fashioned to serve the needs of all litigation, not merely select types of pending cases.

Reversed."

The majority of the Court considered the possible disturbance of the judge from an exaggerated angle, when it said:

"Conceivably, a plan of reporting on a case could be so designed and executed as to poison the public mind, to cause a march on the court house, or otherwise to disturb the delicate balance in a highly wrought situation as to imperil the fair and orderly functioning of the judicial process. But it takes more imagination than we possess to find in" • • •.

The Court also said:

"But the law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate."

• • •

"Nor can we assume that the trial judge was not a man of fortitude".

Mr. Justice Murphy, concurring, said generally on this phase:

"In my view, the Constitution forbids a judge from summarily punishing a newspaper editor for printing an unjust attack upon him or his method of dispensing justice. *The only possible exception is in the rare instance where the attack might reasonably cause a real impediment to the administration of justice. Unscrupulous and vindictive criticism of the judiciary is regrettable. But judges must not retaliate by a summary*

suppression of such criticism for they are bound by the command of the First Amendment. Any summary suppression of unjust criticism carries with it an ominous threat of summary suppression of all criticism. It is to avoid that threat that the First Amendment, as I view it, outlaws the summary contempt method of suppression.

Silence and a steady devotion to duty are the best answers to irresponsible criticism; *and those judges who feel the need for giving a more visible demonstration of their feelings may take advantage of various laws passed for that purpose which do not impinge upon a free press. The liberties guaranteed by the First Amendment, however, are too highly prized to be subjected to the hazards of summary contempt procedure.*"

On a strikingly parallel instance between the *Craig case* and my own, this Court said:

"It might well have a tendency to lower the standing of the judge in the public eye. *But it is hard to see on these facts how it could obstruct the course of justice in the case before the court. The only demand was for a hearing. There was no demand that the judge reverse his position—or else.*"

I, too, was charged with conduct *prejudicial to the administration of justice* at fols. 102, 107, in response to my long series of complaints against Judge Clarence G. Galston. fols. 157 to 166; fols. 202 to 209 and fols. 296 to 300. The refusal of a hearing was corroborated by another attorney.

Moreover, Mr. Justice Jackson, in his *dissenting opinion,* has led the way to a final point of support for my position and defense. He showed that an elective judge had something to fear, more so than an *appointive* judge.

He said:

"From our sheltered position, fortified by life tenure and other defenses to judicial independence, it is

easy to say that this local judge ought to have shown more fortitude in the face of criticism. But he had no such protection. He was an elective judge, who held for a short term. I do not take it that an ambition of a judge to remain a judge is neither unusual or dishonorable."

On this point, the majority of the Court said:

> *"Judges who stand for reelection run on their records. That may be a rugged environment, criticism is expected. Discussion of their conduct is appropriate, if not necessary. The fact that the discussion at this particular point of time was not in good taste falls far short of meeting the clear and present danger test".*

In my case, Judge Clarence G. Galston, was well sheltered against any words of mine in a private letter to him, for it required an *impeachment* by Congress to remove him or to hurt him in his office as a judge. It hurt me more, when reappearing before him; and also *in the whispering among the judges,* which cannot be denied.

May 26, 1947.

Respectfully submitted,

JULES CHOPAK,
In Propria Persona,
Appellant,
261 Broadway, New York 7.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1277

IN THE MATTER OF THE APPLICATION TO DISCIPLINE JULES CHOPAK, AN ATTORNEY AND COUNSELOR AT LAW

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Eastern District of New York (R. 118–134) is reported at 66 F. Supp. 265. The opinions of the Circuit Court of Appeals for the Second Circuit (R. 137–143) have not yet been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Second Circuit was entered on March 18, 1947 (R. 144). The petition for a writ of certiorari was filed on April 22, 1947. The jurisdiction of this Court is invoked under the provisions

of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the court below erred in failing to set aside an order of the District Court of the United States for the Eastern District of New York, suspending an attorney for three years from practice before that court for certain oral and written statements made in connection with a suit pending there.

RULES INVOLVED

The pertinent portions of Rule 3 of the rules of the District Court and of paragraphs 1 and 3 of the Canons of Ethics of the New York State Bar Association, to which Rule 3 refers, are set forth in the Appendix to this Brief, *infra,* pp. 18–19.

STATEMENT

On April 3, 1946, on the basis of an affidavit by an Assistant United States Attorney (R. 35–36), the District Court for the Eastern District of New York issued an order directing petitioner to show cause why he "should not be dealt with in accordance with the law and rules and practices of this Court for unprofessional conduct and for conduct prejudicial to the administration of justice" (R. 34). The affidavit referred to certain letters and statements set out in a Bill of Particulars thereafter served on petitioner (R. 37–50), among which were the following:

(a) A letter dated June 9, 1945, from petitioner to one Cathey, a client in a case then pending in the District Court, which letter, referring to a proposed compromise and a conference with a judge of the Court, continued in part as follows (R. 38–39):

> * * * The Judge said that the case will not be reached for trial and cannot be tried this month and that therefore it will positively go over to Fall, to October. I do not know who the Judge will be in October; some judges I do not like. Maybe I won't want the October Judge. * * * DOCTOR STOOKEY'S LAST REPORT WAS SO DANGEROUS AND SO SHARPLY ANTAGONISTIC TO YOU, THAT IT ALONE COULD BE MADE GROUNDS FOR A JURY TO TURN US OUT WITHOUT A NICKEL. (That is, if they wanted to feel prejudiced FOR ANY REASON or to think, EVEN IF FALSE, that you were a FAKIR. There is no guarantee about juries. I think THEY STINK. * * *

(b) A letter dated September 28, 1945, from petitioner to the same client, for whom and at whose motion another attorney had just been substituted, reading, in part, as follows (R. 45):

> I forced your matter to a conference with Judge Kennedy when I was yet your lawyer. In it, he had the power, right and duty to mediate between the parties and the lawyers in your cause. To him, you were

just another name and another case. I brought Mr. Fay along, caused him to participate to break the resistance of prejudice.

When Judge Kennedy, the same judge who let you cast off your lawyer so lightly, because the law is silly in that regard, heard an offer of $2,500.00 was made and I was squawking for more, he veritably chased me right out of his office. He was as impatient with me for you as he was with me on both days that you were audience to his actions. If you thought that his actions were leveled at me personally you were greatly mistaken, because he simply dealt as is his custom according to his own tastes and judgment.

(c) A statement made by petitioner in explanation of the September 28 letter, in the course of a proceeding before a referee appointed to take testimony in connection with a controversy among petitioner, another attorney, and this erstwhile client as to the distribution of the verdict recovered by the client. The statement, in part, was as follows (R. 48–49):

Q. Did you tell Mr. Cathey in any conversations with him that Judge Kennedy, of this Court, was prejudiced against him because he was a Negro? A. No.

Q. Did you ever put that in writing? A. I don't know, I did not but I would like to see any letter or communication to which you refer.

Q. Well, I refer to the communication of September 28th, which is one of the exhibits here? * * *

* * * * * * *

* * * It starts off "I forced your matter to a conference with Judge Kennedy when I was yet your lawyer. In it, he had the power, right and duty to mediate between the parties and the lawyers in your cause. To him, you were just another name and another case. I brought Mr. Fay along, caused him to participate to break the resistance of prejudice."

Q. Prejudice of whom? A. Against me; I am a Jew, and I will add also that he was a colored man. I think that also is a prejudice.

The REFEREE. I think a reflection on any one in this Court is entirely unfounded and uncalled for, and that if there is the slightest insinuation along those lines by either the plaintiff or by you, Mr. Chopak, a public statement should be made by way of apology or a statement to the effect it was not intended to reflect on any of the Judges of this Court. That is my view.

Mr. CHOPAK. I agree with you, Judge, perhaps it is more heated than anything else and on sober reflection I would have deleted that paragraph in that letter.

(d) A letter dated March 25, 1946, from petitioner to Judge Clarence G. Galston of the District Court, in response to the notice of settlement

of an order which the judge had directed to be entered, confirming the report of the referee, fixing his fee, and providing for the distribution of the verdict, in part to petitioner in payment of the fee claimed by him. The letter reads as follows (R. 50):

JULES CHOPAK
Counselor at Law

MARCH 25, 1946.

Honorable CLARENCE G. GALSTON
Judge United States Court, Eastern District, of New York, Brooklyn, New York

Re: *Order Cathey* v. *Bethlehem Steel Co.* returnable for signature March 26, 1946

DEAR SIR: In the light of my past experiences before you, I think it is futile and a waste of stationery to submit a counter order to you for signature.

I think signing this order in its form in its entirety is despotic and in excess of authority as well as deliberately taking advantage of your office to rule with passion and vehemence.

If a specific proceeding was presented to you and you referred the specific proceeding for reference, regardless of justice of so doing, which, of course, is answered that it is correctible on appeal to the Appellate Court, why should your Referee and you deliberately go out of your way to decide a matter which was not embraced in the

proceeding and go beyond the issues just so as to show an example of authority.

I protest the signature of this order in this form.

If I had the slightest notion that a counter order would even be considered I would submit one.

No copy of this letter is sent to any other attorney or person as a proposed counter order need not be served.

Respectfully,

Jules Chopak.
JULES CHOPAK.

On March 27, 1946, Judge Galston referred this last letter to the senior judge of the District Court and requested that disciplinary proceedings be instituted against petitioner (R. 33). The order to show cause (R. 34) and the Bill of Particulars (R. 37–50) followed. In response to the order, petitioner sent a letter dated April 29, 1946, to the senior judge, reading in part as follows (R. 51):

> As I make no issue as to the genuineness of the basis of the papers which comprise the charges, and, upon a hearing, I could only repeat what has been stated in the accompanying papers. I beg to be excused from personally appearing before your august body just to repeat the same matter all over again in another form and at the expense of a stenographer's record.
>
> * * * * *

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> Therefore, I respectfully request the Court to waive any oral hearing and personal presentation.

Accompanying the letter was his affidavit, admitting that he had written the letters and made the statement referred to in the Bill of Particulars, but urging in defense and for mitigation, that Judge Galston had not complied with the ethical standards for judicial office; that lawyers had a right, protected by the Constitution, to criticize judges; and that petitioner's conduct was not in violation of his obligations as lawyer (R. 52–67). An affidavit of another attorney criticizing Judge Galston's conduct in the matter here involved (R. 68–70), letters from various bar associations of a general and indefinite purport (R. 71–74), and a memorandum of law (R. 75–77) were also filed by petitioner.

On May 1, 1946, a hearing on the order to show cause was held before four of the district judges (R. 83–105).[1] Petitioner did not appear personally, and his attorney consented to the submission of the matter on the papers but promised that petitioner would appear if the court desired that he do so (R. 83–84, 90–91, 104–105). Nevertheless, when by order dated May 22, 1946, the court ordered petitioner to appear personally before them on June 3, 1946, he failed to do so (R.

[1] Neither of the judges referred to in petitioner's letters and statement took part in the disciplinary proceeding.

106–107). Instead, on May 29, petitioner had addressed a letter to the senior judge, asking that the hearing not be held, advising that he did not expect to appear, and admitting again that he had written the letters and made the statements with which he was charged, but denying their impropriety (R. 109). Again, on May 31, 1946, petitioner sent still another letter, this to all the judges sitting in the proceeding, noting his intention not to appear, stating that he had voluntarily withdrawn from matters pending in the District Court and intended to accept no new matters requiring practice in that court, and praying that this "voluntary penalty" which he had imposed on himself be permitted to end the matter (R. 111–113). When inquiry was made, however, petitioner's representative insisted that petitioner had not intended that letter as a resignation from the court's roll of attorneys (R. 113–115, 116).

Thereupon, the District Court, after a consideration of all the proceedings and the documents on file, found that "The record as a whole demonstrates a complete lack of understanding, on the part of * * * [petitioner], of his obligations as a member of the Bar of this Court toward the institution in which he conducts a client's cause" (R. 131), and that he had been guilty of unprofessional conduct and had offended against the Canons of Ethics of the New York State Bar Association, both in violation of Rule 3 of the court (R. 133); and, on these findings and tak-

ing into consideration the fact that petitioner had been previously twice disciplined, once by the same court and once by the Court of Customs and Patent Appeals (R. 133), the court issued the order of suspension (R. 30–32). On appeal, the Circuit Court of Appeals for the Second Circuit, with Judge Clark dissenting,[2] affirmed the order of the District Court (R. 137–144).

ARGUMENT

The court below, finding that petitioner's conduct had "passed all bounds of propriety" and clearly "required disciplinary action," held that the measure of discipline was a matter for the sound discretion of the District Court and that that discretion had here been exercised without abuse; consequently, it affirmed the order of suspension (R. 137–140). We submit that there was reasonable warrant for the decision and that no review by this Court is necessary.

That courts have the inherent power to suspend or disbar attorneys admitted to practice before them cannot now be questioned. The exercise of that power by the Federal judiciary has been repeatedly upheld by this Court. *Ex parte Secombe,* 19 How. 9; *Ex parte Burr,* 9 Wheat. 529; *Ex parte Wall,* 107 U. S. 265; see *Bradley* v.

[2] Judge Clark's dissent was not on the ground that petitioner's conduct was not improper and unprofessional, but rather that the three-year suspension was too severe a disciplinary measure (R. 142). He therefore urged return of the proceeding to the District Court for reconsideration (R. 143).

Fisher, 13 Wall. 335; *Ex parte Bradley*, 7 Wall. 364, 374; *Ex parte Garland*, 4 Wall. 333, 378–379. Equally well established is the broad discretion in the *nisi prius* court to determine (a) whether the conduct involved calls for disciplinary action, and (b) the extent of the discipline to be imposed. The reviewing court is confined solely to the function of ascertaining whether there was an abuse of that discretion or an irregularity in its exercise. *Ex parte Secombe, supra; Ex parte Burr, supra; In re Claiborne*, 119 F. (2d) 647 (C. C. A. 1); *In re Spicer*, 126 F. (2d) 288 (C. C. A. 6).[3]

The courts below regarded petitioner as derelict in his failure to maintain that respect which attorneys owe to the courts of justice and to judicial officers. To criticize a court's ruling, whether before the court itself or on appeal, as erroneous in law and unsupported by fact is one thing; such criticism would be not only proper but might well

[3] *Ex parte Burr*, 9 Wheat. 529, 530, per Marshall, C. J.: "* * * it is extremely desirable that the respectability of the bar should be maintained, and that its harmony with the bench should be preserved. For these objects, some controlling power, some discretion, ought to reside in the court. This discretion ought to be exercised with great moderation and judgment; but it must be exercised; and no other tribunal can decide, in a case of removal from the bar, with the same means of information as the court itself. If there be a revising tribunal, which possesses controlling authority, that tribunal will always feel the delicacy of interposing its authority, and would do so only in a plain case. * * * the [Supreme] court is not inclined to interpose, unless it were in a case where the conduct of the circuit or district court was irregular, or was flagrantly improper."

be required in performance of the lawyer's obligations to his client. But it is quite another to brand a judge's official act "despotic," as did petitioner here, to accuse him of "deliberately taking advantage" of his office "to rule with passion and vehemence", and of such unfairness and partiality as to make it "futile and a waste of stationery" for petitioner to submit a counter order to him for settlement (R. 50), and unjustifiably to impute racial and religious prejudice to another judge (R. 45, 48–49). Such comments resemble the "insulting language and offensive conduct toward the judges personally for their judicial acts" which this Court censured in *Bradley* v. *Fisher*, 13 Wall. 335, 355. Cf. *Cooke* v. *United States*, 267 U. S. 517.

These statements of petitioner were both written and oral. When they are coupled with petitioner's failure, notwithstanding numerous opportunities, to apologize for the letter to Judge Galston (R. 50) and his refusal to comply with the District Court's order that he appear before it personally to explain his conduct (R. 106–107, 109, 111–113), there can be little doubt as to the correctness of the refusal of the court below to set aside the order of suspension.

The integrity of the judiciary is vital to the fair administration of justice and, thus, to the preservation of our democracy. See *Bridges* v. *California*, 314 U. S. 252; *Pennekamp* v. *Florida*,

328 U. S. 331. Since lawyers are officers of the courts (*Powell* v. *Alabama*, 287 U. S. 45, 73) and consequently more likely by their unwarranted and unfavorable aspersions against the judiciary to damage its reputation in the eyes of the citizenry, the courts have been vigilant to discover such misconduct and to discipline the guilty. Disciplinary proceedings of this character are not uncommon. *Duke* v. *Committee on Grievances, etc.*, 82 F. (2d) 890 (App. D. C.), certiorari denied, 298 U. S. 662; *In re Claiborne*, 119 F. (2d) 647 (C. C. A. 1); *Ex parte Cole*, 1 McCrary 405, Fed. Cas. No. 2973 (C. C. D. Iowa, per Miller, J.); *United States ex rel. Hallett* v. *Green*, 85 Fed. 857 (C. C. D. Colo.); and see *Kelley* v. *Boettcher*, 82 Fed. 794 (C. C. A. 8, per Brewer, J.); *Cooke* v. *United States*, 267 U. S. 517; *In re Minnis*, 56 Sup. Ct. 504.[4]

In the *Duke* case, *supra*, Duke, an attorney for one of the defendants in a criminal prosecution (*Moder* v. *United States*), used the following language to complain of the action of the trial justice in signing a bill of exceptions submitted by counsel for the prosecution and in refusing to

[4] Typical of proceedings in the state courts are: *In the Matter of Pryor*, 18 Kan. 72, 26 Am. Rep. 747 (per Brewer, J.); *State Board of Law Examiners* v. *Hart*, 104 Minn. 88, 116 N. W. 212; *In re Glauberman*, 107 N. J. Eq. 384, 152 Atl. 650; *Matter of Rockmore*, 127 App. Div. 499, 111 N. Y. Supp. 879; *In re Eaton*, 60 N. D. 580, 235 N. W. 587; *Wilhelm's Case*, 269 Pa. 416, 112 Atl. 560; *Snyder's Case*, 301 Pa. 276, 152 Atl. 33; *In re Troy*, 43 R. I. 279, 111 Atl. 723.

admit the defendants to bail (82 F. 2d, at 891, 892):

> Appellants * * * charge that the * * * trial justice has intentionally and deliberately sent up * * * a false, inaccurate, incomplete, deleted and diluted, bill of exceptions * * *, and the United States Attorney stands equally guilty in this obstruction of justice, and falsification of records herein.
>
> * * * * *
>
> * * * the trial judge has destroyed any possible belief in either his judicial discretion or his judicial or personal integrity because of his falsification of the record in this case. * * *

Confronted with such accusations, the Court of Appeals for the District of Columbia ordered a preliminary hearing on the question whether the record on appeal was in fact a deliberate and premeditated perversion of the facts of the trial *Moder* v. *United States*, 62 F. (2d) 462 (App. D. C.). Duke, however, declined to submit a statement of facts which the court invited and failed to appear at the hearing. The judgment of the District Court was thereupon affirmed. Thereafter, Duke, acting as counsel for plaintiff in another suit, caused that client to verify and file an affidavit of disqualification against the justice whose conduct Duke had attacked in the previous suit, the affidavit reiterating the charges previously made (82 F. 2d, at 892–893). In defense of the disbarment pro-

ceeding which then followed, Duke repeated his charges (82 F. 2d, at 893). The Supreme Court of the District of Columbia entered an order of disbarment; the Court of Appeals affirmed; and this Court denied certiorari, 298 U. S. 662.

We submit that review of the lower court's decision here should likewise be denied. There was evidentiary support for the finding as to petitioner's unprofessional conduct. And there is no question but that the proceedings against him were regular in every respect, adequate notice and opportunity to be heard having been accorded him at every stage.[5] The fact that the District Court noted that petitioner had been twice disciplined on prior occasions for unethical conduct (*In re Chopak,* 43 F. Supp. 106 (E. D. N. Y.); *In re Chopak,* 20 C. C. P. A. 124) infringed none of his rights. It was a proper element to be considered in measuring the extent of the discipline to be meted out.

Nor is there any constitutional infirmity in the District Court's order, as petitioner apparently

[5] "It is not necessary that proceedings against attorneys for malpractice, or any other unprofessional conduct, should be founded upon formal allegations against them. * * * All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judge, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defence. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation." *Randall* v. *Brigham,* 7 Wall. 523, 540; *In re Claiborne,* 119 F. (2d) 647 (C. C. A. 1).

suggests (Pet. 2). As this Court noted many years ago, in upholding the judicial power to disbar attorneys, in *Ex parte Wall,* 107 U. S. 265, 288:

> * * * the courts ought not to hesitate, from sympathy for the individual, to protect themselves from scandal and contempt, and the public from prejudice, by removing grossly improper persons from participation in the administration of the laws. The power to do this is a rightful one; and, when exercised in proper cases, is no violation of any constitutional provision.

This is not a contempt proceeding such as those involved in *Bridges* v. *California,* 314 U. S. 252, and *Pennekamp* v. *Florida,* 328 U. S. 331. By suspending petitioner, who has disregarded his obligations as an officer of the court (*Powell* v. *Alabama,* 287 U. S. 45), from practice before it, the District Court is seeking primarily to preserve "the courts of justice from the official ministration of persons unfit to practise in them." *Ex parte Wall., supra,* at 288; *State* v. *Peck,* 88 Conn. 447, 91 Atl. 274. The lawyer, an officer of the courts in which he practices, is the guardian of a public trust. *Randall* v. *Brigham,* 7 Wall. 523, 540; *Booth* v. *Fletcher,* 101 F. (2d) 676, 680 (App. D. C.), certiorari denied, 307 U. S. 628. The right to regulate the legal profession and to remove from its lists those found disqualified and unfit for the adequate performance of that trust is essential to the protection of the public interest. *Booth* v.

Fletcher, supra. As Mr. Justice Brewer said, in speaking of our courts, in *Hatfield* v. *King,* 184 U. S. 162, 168: "It is not enough that the doors of the temple of justice are open; it is essential that the ways of approach be kept clean."

That the exercise of the courts' power to discipline the bar may, to some degree, limit the lawyer's freedom of expression is cogent argument for caution in its exercise, but it is hardly reason to deny the power. Certainly the lawyer's license to insult and calumniate the judiciary must give way to the public interest in maintaining the integrity of the courts and the faith of the people in a fair administration of justice. See *Duke* v. *Committee on Grievances, etc.,* 82 F. (2d) 890, certiorari denied, 298 U. S. 662 and other cases cited, *supra,* p. 13 and fn. 4.

CONCLUSION

The decision of the court below raises no questions warranting further review by this Court. It is respectfully submitted that the petition for a writ of certiorari should be denied.

GEORGE T. WASHINGTON,
Acting Solicitor General.
PEYTON FORD,
Acting Assistant Attorney General.
PAUL A. SWEENEY,
HARRY I. RAND,
Attorneys.

MAY 1947.

APPENDIX

A. Rules of the United States District Court for the Eastern District of New York (1938):

Rule 3. Disbarment.

* * * * *

Any member of this Bar may be disbarred, suspended from practice for a definite time, or reprimanded for good and sufficient cause shown, after an opportunity has been afforded such member of the Bar to be heard.

Unprofessional conduct on the part of a member of this Bar requiring discipline, shall include fraud, deceit, malpractice, conduct prejudicial to the administration of justice, or a failure to abide by any of the provisions of the Canons of Ethics of the New York State Bar Association.

* * * * *

All applications for orders to show cause why a member of the Bar of this Court should not be disciplined shall be made to or before the Senior Judge of this Court unless otherwise ordered by him, or he shall be absent from the District, in which last mentioned contingency they shall be made to or before the Senior of the Judges within this District.

B. Canons of Ethics adopted by the New York State Bar Association (1909):[1]

[1] New York State Bar Association, Proceedings of the Thirty-Second Annual Meeting Held at Buffalo January 19, 28-29, 1909, etc., pp. 679 *et seq.*

1. *The Duty of the Lawyer to the Courts.*—It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit the grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

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3. *Attempts to Exert Personal Influence on the Court.*—Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

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